

BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the Matter of the Application  
regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates

Docket No. G02-45

SPECIAL MASTER'S ORDER ON  
INTERVENERS' MOTION FOR  
AUTHORIZATION TO DISCLOSE  
ATTORNEYS EYES ONLY  
INFORMATION TO INTERVENERS'  
CONSULTANT, AARON KATZ

This matter comes before me on Interveners' "Motion for Authorization to Disclose Attorneys Eyes Only Information to Interveners' Consultant, Aaron Katz," dated November 25, 2003. I have considered the Motion, Premera's Response, dated December 1, 2003, and Interveners' Reply, dated December 2, 2003.

Interveners state that they engaged Aaron Katz of the University of Washington Health Policy Analysis Program ("HPAP") to conduct a health impact study of the proposed conversion, provide a report of that study, and offer hearing testimony. HPAP timely filed its report without access to Confidential or AEO information. (Interveners state that they wanted to ensure that the entire study would be available to the public.)

Interveners now request that Mr. Katz be authorized to receive access to Confidential and AEO information to allow him to effectively serve both as consulting expert and testifying expert. As a consulting expert, Mr. Katz would assist counsel in evaluating expert reports, including Premera's experts' conclusions. Mr. Katz has

completed the Appendix A declaration which is required for access to Confidential and AEO materials.

Premera opposes Mr. Katz's access, asserting: Interveners had ample time to seek access to Premera's Confidential and AEO information for Mr. Katz, but determined that he did not require such information to evaluate the conversion proposal, form his expert opinions, and write his report. Mr. Katz's deposition is scheduled for December 5, 2003, the discovery cutoff. Providing him with AEO information on the eve of his deposition, after his report is final, would make discovery of his opinions and their bases a moving target not contemplated by the discovery schedule. Mr. Katz may now assist Interveners' counsel in their hearing preparation by using public versions of the expert reports; he need not have access to Premera's most sensitive business information to do so.

*Discussion:*

Mr. Katz appears to be a qualified expert who is not currently or regularly employed by persons or entities that compete directly or indirectly with Premera. If Interveners had earlier requested that Mr. Katz receive access to Confidential and AEO information, he clearly would have been entitled to the full access provided to other qualified experts. The issue, then, is whether the timing of Interveners' request, after submission of HPAP's final expert report, should preclude the access that earlier would have been permitted.

I do not find support in the Protective Order, in the Case Schedule, or in general principles of fair procedure for the proposition that access should now be denied. Interveners have a legitimate need to consult experts in preparation for the hearing now scheduled for January 2004. Mr. Katz appears to be well-qualified to serve in that role,

as well as, potentially, to testify as a rebuttal expert for Interveners (subject to procedural and substantive objections). Meaningful service by Mr. Katz as Interveners' consulting or rebuttal expert requires that he have access to the same materials as the experts to whose opinions he will respond.

Premera should, however, be given the option to defer Mr. Katz's deposition to a time when he will have had the opportunity to examine Confidential and AEO materials and may be questioned about these.

*Ruling:*

Mr. Katz shall be permitted access to Confidential and AEO information, as described in the Eighth Order. Mr. Katz's deposition may be deferred, at Premera's option, to a mutually convenient date not later than December 12, 2003, by which time Mr. Katz is expected to have received and reviewed Confidential and AEO materials.

DATED this 3rd day of December, 2003.

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George Finkle  
Superior Court Judge, Retired  
Special Master